IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
FOR DIVISION II.

Harold S. George, Appellant, vs. State of Washington, Respondent.	Cause No: 13-1-03842-2 46366-1-II APPELLANTS STATEMENT OF ADDITIONAL GROUNDS

I. Facts.

The Appellant now comes forth and states that this motion should be reviewed pursuant to "R.A.P. 10.10" and this case should be reversed and/or dismissed due to the following reasons:

(1). There was never a mental Health Evaluation;
(2). There was a severe conflict of Interest in this case;
(3). The defendant's Sixth Amendment Right to counsel of choice was violated,
(4). The victim made inconsistant, unreliable and False Statements to the Court during testimony;
(5). There was prosecutorial misconduct during trial and closing arguments;
(6). Trial Counsel was ineffective prior and during trial and sentencing;
(7). The Appellate counsel was ineffective in the direct Appeal.

II. ARGUMENT

Did The Trial Attorney Show Ineffective Assistance By Not Requesting A Competency Hearing?

It is clear that this appellant has had multiple attorneys that have represented him but have all represented him improperly due to the fact that he is a native Puyallup Indian and he receives money from his tribe (per Capita) and this defendant has Mental Health and other characteristics that renders him particularly vulnerable . In re disciplinary Proceeding Against Blanchard, 158 wn.2d.317, 332, 144 P.3d. 286(2006)(quoting In re Disciplinary proceeding against Christopher, 153 wn.2d. 669, 682, 105 P.3d 976(2005).

Its been argued by the attorney of Record (Kent Underwood), that the trial Attorney (Roger-Kemp) was ineffective and to add to this situation this Appellant is also illiterate to the court system and has litercy problems that effect this case including mental health problems. Scott v. Badnar, 52 N.J. Super. 439, 145 A.2d. 643 (1958) (quoting Pac. Co. v. Gastelum, 36 Ariz. 106, 283 P.719(1929).

R.C.W. 10.77 governs the procedures and standards trial court use to Judge the competency to stand trial. State v. wicklund, 96 wash.2d. 798, 801, 638 P.2d. 1241(1982).

As can be seen by the appendix that is attached this Appellant is in the process of gathering the evidence that his appellate Attorney failed to do in order to show that the trial attorney failed to do her job when it came to this issue and abused her authority over the appellant at the trial stages. Rodriguez v. Dept. of Labor & Indus., 85 wash. 2d. 954-55, 540 P.2d.1359(1975).

When this counsel knew or should have known of this Appellant's defect and illness affecting his felony case, this counsel should have (1) promptly sought the Appointment

of co-counsel (2) presented a mitigating package to the prosecutor before notice was filed of this sentence, (3) promptly investigating his relevant mental health issues considering these type of charges, (4) sought a timely Appointmentof Investigation, (5) Sought a timely Appointment of qualified mental Health experts, and (6) Adequately prepared for the penalty phase and trial stage by having relevant mental issues fully assessed and by retaining, if necessary, qualified Mental Health Experts to testify accordingly. In re pers Restraint of Brett, 142 wash.2d.882-83, 16 P.3d. 601 (2001).

Whenever there is a reason to doubt a defendants conpetency, the court on its own motion "or" on the motion of any party shall order an evaluation which this attorney should have done pursuant to R.C.W. 10.77.060(1)(a).

The state cannot rely on presumption on issues such as this; it must be relied on facts alone. State v. Womble, 93 wash.App. 599, 604, 969 P.2d. 1097(1999).

The Fourteenth Amendment protects individuals from the deprivation of Life, Liberty, or Property without Due Process of Law and from the arbitrary exercise of the powers of government. United States Const. Amend. XIV § 1, Wolff v. McDonnell, 418 U.S. 539, 558, 94 S.Ct.2963, 41 L.Ed.2d. 935 (1974); Hurtado v. California, 110 U.S. 516, 527, 4 S.Ct. 111, 28 L.Ed.232(1984).

This competency evaluation is more than an abstract need or desire, its a necessary, Board of Regents of State Colls. v. Roth, 408 U.S. 564, 577, 92 S.ct. 2701, 33 L.Ed.2d. 548 (1972); and its based on more than just a unilateral; Hope Conn.Bd. of Pardons v. Dumschat, 452 U.S. 458, 465, 101 S.Ct. 2460, 69 L.Ed.2d. 158(1981).

This issue can be seen as protected by the constitution and from an expectation and interest created by state Laws and Policies. Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 162 L.Ed.2d. 174 (2005)(citing Vitek v. Jones, 445 U.S. 480, 493-94, 100 S.Ct. 1254, 63 L.Ed.2d.552(1980);

Wolff, 418 U.S. at 556-58, 94 S.Ct. 2963.

It would have been shown that this Appellant was not competent to assist in his own defense had there been an evaluation. State v. Hahn, 106 wash.2d. 885, 895, 726 P.2d. 25 (1986).

Pursuant to the Due Process of the 14th Amendment; An Incompetent defendant may not stand trial in the way that this defendant/Appellant did. Medina v. California, 505 U.S. 437, 439, 112 S.Ct. 2572, 120 L.Ed.2d. 353(1992).

Since this attorney at the trial stages had failed to properly represent this appellant and to protect his rights to this competency hearing then remand is now required. Drope v. Missouri, 420 U.S. 162, 183, 95 S.Ct. 896, 43 L.Ed.2d. 103 (1975): In re pers. Restraint of Fleming, 142 wash.2d.853, 16 P.3d. 610(2001).

For this court to make any different type of statutory interpretation of this competency issue would be reviewed de novo by the Supreme Court of Washington and the Ninth Circuit. State v. Erwin, 169 wash.2d.815, 820, 239 P.3d.354(2010). (see also): State v. Rundquist, 79 wash.App. 786, 793, 905 P.2d. 922(1995(; review denied, 129 wash.2d. 1003, 914 P.2d. 66 (1996); State v. Ortiz, 104 wash.2d.479, 482, 706 P.2d. 1069(1985); cert. denied, 476 U.S. 1144, 106 S.Ct. 2255, 90 L.Ed.2d.700(1986); State exrel. Carroll v. Junker, 79 wash.2d. 12, 26, 482 P.2d. 775(1971).

An issue such as this must be done by a sanity commission expert, not a layman person that is an officer of the court. State v. Williams, 34 wash.2d. 367, 271, 209 P.2d331(1949).

Generally, an issue cannot be raised for the first time on appeal unless as here it is a manifest error that affects his constitutional Rights R.A.P. 2.5(a)(3).

This attorneys actions caused actual prejudice and it was at critical stages of these proceedings. State v. Munuia, 107 wn.App. 328, 340, 26 P.3d.1017(2001)(citing State v.

McFarland, 127 wn.2d.522, 333, 899 P.2d. 1257(1995)) review denied, 145 wn.2d.1023(2002). (see also): State v. Heddrick, 166 wn.2d. 989. 909-10, 215 P.3d.201(2009); State v. Everybody-talksabout, 161 wn.2d.702, 708, 166 P.3d. 693(2007).

Errors of this magnatude creates a Brecht Harmless error standard test when there has been a failure to engage in issues that require reversal, and when an error such as this is "not HARMLESS" since it has such a substantial and injurious effect and influence in determining the trial courts verdict. Brecht v. Abraham, 507 U.S. at 637, 113 S.Ct. 1710 (quoting Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct. 1239, 90 L.Ed.1557 (1946)).

The State now bears the burden of "Risk of Doubt" whether or not this was harmless not the defendant. O'Neal v. McAninch, 513 U.S. 432, 439, 115 S.Ct. 992, 130 L.Ed.2d.947(1995); Gray v. Klauser, 282 F.3d. 633, 651(9th cir.2002); United States v. Hitt, 981 F.3d. 422, 425(9th.cir.1992); Payton v. Woodford, 299 F.3d. 815, 828(9th cir.2002).

The Fourteenth Amendment also forbids this State to deny this appellant the equal protection of the Laws and the Federal Government under the Due Process Clause of the 5th Amendment. Buckley v. Valeo, 424 U.S. 1, 93, 96 S.Ct.612(1976); Bolling v. Sharpe, 347, U.S. 497, 499, 74 S.Ct.693(1954); (see also): E.G., State v. Hirschfelder, 170 wash.2d.536, 550, 242 P.3d.876 (2010); Am. Legion Post No. 149 v. Dept. of Health, 164 wash.2d. 570, 609, 192 P.3d. 306(2008)(quoting Madison v. State, 161 wash.2d. 85, 103, 163 P.3d.757(2007); (see also): Griffin v. Eller, 130 wash.2d.58, 65, 922 P.2d.788 (1996)(citing In re Runyan, 121 wash.2d. 432, 448 P.2d.424 (1993)); Westerman v. Cary, 125 wash.2d.277, 294, 892 P.2d. 1067(1994); State v. Schaaf, 109 wash.2d.1, 17-19, 743 P.2d. 240 (1987).

It forbids the discrimination or classification that is unjustified or invidious. Ferguson v. Skrupa, 372 U.S. 726, 732, 83 S.Ct. 1028(1963): Lindsey v. Natural Carbolic Gas Co., 220 U.S. 61, 78-79, 31 S.Ct. 337 (1911); In re pers. Restraint

of Salinos, 130 wash.App. 772, 124 P.3d. 665(2005); In re pers. Restraint of Stanphill, 134 wn.2d. 165, 174, 949 P.2d. 365(1998).

The State cannot now come forth and argue that this was some type of invited error it is apparent that ineffective assistance had plated a major role in this scenario. (see): e.g. State v. Pam, 104 wash.2d.507, 511, 680 P.2d. 762(1984); Accord, State v. Boyer, 91 wash.2d. 342, 345, 588 P.2d.1151 (1979); State v. Lewis, 15 wash.App.172, 177, 548 P.2d.587(1976) (see also): Davis v. Globe Mach. Mfg. Co. 102 wash.2d.68, 77, 684 P.2d. 692 (1984); City of Seattle v. Pafu, 147 wash.2d. 717, 720, 58 P.3d. 273(2002).

This evidence is relevant and admissible to this matter and should not be dismissed out of hand. State v. Clark, 78 wn.App. 471, 477, 898 P.2d. 854(1995); United States v. Briscoe 574 F.2d. 406, 408(8th cir.1978).

For this court to try and exclude this issue without sufficient Justification would violate his Constitutional Rights to compulsory process. United States v. Melchor Moreno, 536 F.2d.1042, 1045(5th.Cir.1976).

This Appellant has always relied on paid attorneys to take care of him and be Trustworthy which clearly is not working since there is a continuous argument to the courts of ineffective assistance due to they recognize this Appellants Mental Health issues and take advantage of an easy payback "until now". Sofia, 162 A.D.2d. at 520(quoting Pimpinello v. Swift & Co., 253 N.Y. 159, 163, 170 N.E. 530 (1930).

This court should rule that this attorney had made misrepresentations to the trial courts and committed fraud and misrepresentation to this Appellant in violation of R.P.C. 4-4.3(a)(1) and 4-8.4(c)(engaging in conduct involving dishonesty, fraud, deciet, misrepresentation and ingaging in conduct Prejudicial to the administration of Justice in violation of R.P.C. 4-8.4(d). In re Disciplinary matter of Michael Robert Fletcher, No. 03-272, slip op. at 5-6(W.D.Mo.Mat 18, 2004).

As can be seen by the attached Appendix this Appellant is requesting now that this court allow him to file a Supplemental Brief pursuant to R.A.P. 10.1 (h) in order to show the evidence that a competency Mental Health Evaluation should have been conducted is this matter Prior to Trial, In re Pers. Restraint of Higgins, 152 wn.2d.155, 160, 95 P.3d. 330(2004).

Did This Defendant/Appellants Trial Attorneys Deficient Performace Cause Prejudice And An Unfair Trial In This Matter?

It will show that the attorney of record not only had a conflict but also was deficient in her performance in this case at hand, and it does amount to a Manifest-error affecting the defendant/Appellants Constitutional Rights. State v. Munguia, 107 wn.App.328, 340, 26 P.3d.1017(2001)(citing State v. McFarland, 127 wn.2d.322, 333, 899 P.2d.1251(1995)); review denied, 145 wn.2d.1023(2002); (see also): State v. Horton, 116 wash.App.909(2002).

During the testimony of C.D. there will be a clear showing of unreliability, Inconsistency, contradictions, False Statements that are clearly coached that can be seen by trigger words, and due to the deficient performance of this trial attorneys failure to perform and have the witness be placed back on the stand after Mitchell made Statements of C.D. not being at the campfire or the issue of staying the night of Christmas eve not utilizing ER613 (b). Horton, 116 wash.App. at 916, 917.

This argument will be broke up in sections to show the numerous ways that the witness should not be trusted.

(A) Coached witness.

When the courts look into issues of a witness that may Possibly be coached the more speculation

of them be coached is not enough. Hedberg v. Indiana Bell Telephone Co., Inc., 47 F.3d.928,931-32(7th cir.1995).

Due to this victim being the age of 12 and the State claims that she has learning disabilities and is supposed to be developmentally disabled it becomes very hard for any reasonable person to understand why it is that when she becomes nervous on answering certain questions the Statement of "can you rephrase the question" comes out of her mouth as if she is now highly educated in Law or College due to this is mot normal language of any normal kid even at the age of 18. 3 RP at 105, 106, 126 and 131.

It should not need to be said to this court that an Attorney or a Prosecutor "may not" coach a witness, I.e. urge a witness to create testimony under the guise of refreshing the witnesses recollection under "ER 612" and that has clearly happened with the States witness here. State v. Delarosa-Flores, 59 wash.App.514, 517, 799 P.2d.736(1990); review denied, 116 wash.2d.1010, 805 P.2d.814(1991). (see Also): R.P.C.3.4; Newsome v. McCabe, 256 F.3d.747, 749, 751-52(7th cir.2001).

These types of acts of coaching a witness by the State violates this defendants/Appellants due Process Rights. Newsome v. McCabe, 319 F.3d.301, 304(7th cir,2003).

The courts here must have recognize this as a Due Process Claim for the kind of witness manipulation causing, this conviction especially when this argument shows more testimony. Petty v. City of Chicago754 F.3d.416, 423-24(7th cir.2014); Dominguez v. Hendley, 545 F.3d.585, 590(7th cir.2008); Manning v. Miller, 355 F.3d.1028, 1033(7th cir.2004)(see also): Ienco v. City of Chicago, 286 F.3d.994, 1000(7th cir.2002).

(B). Not Reliable Statements.

It has been proven in the past as in this case that on the issue of the reliability of a childs hearsay Statements that this states existeng law inadequately addresses the possiblitiy of a childs Statements having been tainted by improper suggestive interview techniques. State v. Michaels I, 264 N.J. Super579, 625 A.2d.489(ct.App.Div.1993); aff'd 136 N.J.299, 642 A.2d.1372 (1994); and Idaho v. Wright, 497 U.S. 805, 110 S.Ct.3139, 111

L.Ed.2d. 638 (1990).

The victim, C.D. made multiple Statements that when reviewing would be seen as not being reliable; states that she "thinks" he touched her with one hand but not sure, 3 RP at 95;

Tony and Gus were in the room at the time of the incident, but neither heard anything or were called as a witness to prove this fact, 3 RP at 96;

States that she was too drowsy to get him to stop and the defendant left the room and she "never" said anything or left, 3 RP at 98;

Does not remember if the defendant ever had taken his pants off or not; 3 RP at 102;

She never asked him to stop or stated she never did, 3 RP at 103; Stated it happened in the garage about 10x's; 3 RP at 107, and that it happened in two different rooms (guest and bedroom) and there was no existence of a guestroom in this 3 bedroom home, 3 RP at 109;

This was such a tragic event but never told anybody about this issue. 3 RP at 111.

There always seemed to be people around but had never screamed or made any types of noises during these incidents and then supposedly went to sleep next to the defendant/Appellant; 3 RP at 116;

Stated she tried to leave but the defendant was too close to the exit but states he went to sleep next to her, 3 RP at 116 ;

She stated it was only a few feet away from a campfire with multiple people including her father but states she couldn't scream or make noise to let somebody right outside know she was being hurt; 3RP at 117.

Then when the defendant left the house she would not tell someone of this supposed abuse; 3RP at 127; and had continued to go to his house and pick her up from her house, Id.

For some reason she was not scared to go to the defendants/ Appellants house but scared to say anything. 3 RP at 128;

Then makes a flagrant statement that any man that has been with a woman since virginaty or any woman would know that sex

"does not" continue to hurt after "25x's" of having sex.3 RPat132.

Then she states that Tony was in the Trailer and the prosecutor made this victim state the defendant/Appellant touched her vagina; 3 RP at 137.

It was proven in "Michaels II" that when the "alleged" child has been abused as here and was improperly interrogated causing a substantial likelihood that the evidence derived from those children was in fact unreliable and that it is proper to require a trial court to hold a pretrail taint hearing at which the state should of had to proven that by clear and convincing evidence that Statements and testimony retained sufficient indicia of reliability. Michaels II, 642 A.2d. at 1383; (see also): wright, 497 U.S. 813, 110 S.Ct.3145.

Even though indirect evidence of abuse can suffice to corroborate a childs hearsay Statements there still needs to be evidence to support this type of logical and reasonable inference of a hearsay Statement. State v. Swan, 114 wash.2d.622, 790 P.2d. 610(1990).

Pursuant to R.C.W.9A.44.120, and "State v. Ryan" this victim fails to meet the criteria of reliability in her statements, 103 wash.2d.165, 691 P.2d.197(1984), State v. Parris, 98 wash.2d.140, 654 P.2d.77(1982); Dutton v. Evans, 400 U.S. 74, 91 S.Ct.210, 27 L.Ed.2d.213(1970); (see also): State v. Mitchell, 117 wash.2d. 521, 529, 817 P.2d.398(1991); overruled on other grounds by State v. Dent, 123 wash.2d.467, 869 P.2d.392 (1994); State v. Gregory, 80 wash.App.516, 521, 910 p.2d.505, review denied, 129 wash.2d. 1009, 917 P.2d. 129(1996); State v. Quigg, 72 wash.App.828, 835, 866 P.2d.655 (1994); United States v. Agular, 975 F.2d.45, 47 (2d.cir.1992).

(C). Inconsistent Statements.

The courts have stated that a person who speaks inconsistently is thought to be less credible than a person who does not. State v. Allen S, 98 wash.App.452, 467, 989 P.2d.1222(1999)(quoting State v. Williams, 79 wash.App.21, 26-27, 902 P.2d.1258(1995); review denied, 140 wash.2d.1022, 10 P.3d.405(2000).

C.D.'s Statements became inconsistent when she stated it happened in the trailer first, then in the room, the garage and ten the guest room. 3RP at 105.

Then states that Tony came into the trailer during the campfire but never mentioned it in her original testimony; she just stated the defendant/Appellant came in and did his thing. 3RP at 116 (citing 3RP at 99-100).

When questioned by the Attorney of Record, C.D. had stated that the defendant/Appellant was only rubbing the outside of her leg, 3RP at 118; and during the prior interview stated that the defendant/Appellant "never" touched her vagina and never pulled down her pants, 3RP at 125.

There was questioning about whether or not she had sustained any injurys and C.D. states "no" then states that she doesn't believe that back injury's is an injury but made a statement that she had back problems from these incidents. 3RP at 135-136.

The State prosecutor knew that the victim was being caught in this web of lies and objected to an issue that had no foundation and the trial Judge sustained showing bias towards this defendant/Appellant. 3RP at 136; (see also): State v. Levy, 156 wash.2d.709, 721, 132 P.3d.1067(2006); Wolfkill Feed and Fertilizer Corp. v.Martin, 103 wash.App.836, 841, 14 P.3d.877(2000); State v. Bilah, 77 wash App.720, 722, 893 P.2d.674(1995); McMillan v. Castro, 405 F.3d.405, 409, 410(2003).

Did The Prosecutor Commit Misconduct That Amounts To A Reversal or a Dismissal?

It is common practice that when the courts review for misconduct a defendant in order to prevail on this type of claim must show that in the context of the record and all the trial circumstances, the prosecutors conduct was improper and prejudicail and it clearly was here. State v. Thorgerson, 172 wash.2d.438, 442, 258 P.3d.43(2011); State v. Fisher, 165 wash.2d.727, 747, 202 P.3d.937(2009); State v. Miles, 139 wash.App.879, 885, 162 P.3d. 1169(2007); State v. Hughes, 118 wn.App.713, 727, 77 P.3d. 681(2003)(citing stenson, 132 wn.2d. at 718, review denied, 151 wn.2d.1039(2004).

There were errors of Leading the witness, the amending of the comlaint/Information on day of trial, flagrant ill-intentional acts at trial and at closing arguments that even had the attorney objected would not have cured. State v. Ziegler, 114 wn.2d.533, 540, 789 P.2d. 79(1990).

It is also the Law of this land since at least 1935, it has been established Law of the United States that a conviction obtained through testimony the prosecutor knows to be false is repugnant to the constitution and the prosecutor in this matter clearly disregarded that fact and allowed it anyways. Mooney v. Holohan, 294 U.S. 103, 112, 55 S.Ct.340, 79 L.Ed.791(1935).

This has been done in order to reduce the danger of . false convictions as is here. This prosecutor had only one agenda on his mind and that was to receive a conviction here. It's the prosecutors duty as an officer of the courts to present a forceful and truthful case to the Jury, not to win at any cost as was here. (see) e.g.Jenkins v. Artuz, 294 F.3d.284, 296 n.2 (2d.cir.2002).

(A). Right To New Counsel

The defendant/Appellant had came forth to the court and had argued that there was a severe conflict between him and his current Attorney and that he wanted new counsel and the counsel had agreed, but the prosecutor wanted to violate the defendant/Appellants right to a fair trial. (see) Appendix at 1-3 .

The prosecutors argument that the defendant did not have sufficient grounds for a new attorney when he could afford one and statedthat it would be prejudicial to the states case because the interviews were done had caused both a violation of the U.S. and Washington St. Constitution minimal standards of Due Process Violations to a fair hearing on this argument. 1RP at 8-11. (see also): State v. Parnell, 77 wash.2d.503, 507-08, 463 P.2d.134(1969) (quoting Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct.1639, 6 L.Ed.2d. 751(1961)), overruled on other grounds by State v. Fire, 145 wash. 2d.152, 34 P.3d.1218(2001).

This prosecutors acts here amounts to the misrepresentation to the courts that involve dishonesty, deceit, misrepresentation and is an engagement in conduct prejudicial to the administration of Justice in violation of R.P.C. 4-8.4(d). In re Disciplinary matter of Michael Robert Fletcher, No.03-272, Slip op. at 5-6(W.D.Mo. May 18, 2004).

(B). Leading the Witness.

It reflects on this record that the prosecutor had conducted himself in a manner to lead his witness into desired answer and the attorney of record allowed it without any objection. State v. Sexsmith, 138 washApp.497, 509, 157 P.3d.901 (2007).

It has been established Law that a leading question is one that will suggest a desired answer from the individual testifying. State v. Scott, 20 wash.2d. 696, 698, 149 P.2d. 152(1944).

The prosecutor started by stating of whether or not the defendant's penis was removed when she went from being on top to being laid on her back, 3RP at 102;

He ask C.D. of whether the defendant left her shirt on, 3 RP at 106; and stated what and how he touched, 3 RP at 93.

ER.611(c) provides, that leading questions should not be used in direct examination as was here, except as may be necessary to develop the witnesses testimony and that was not necessary here. The trial courts has broad discretions in allowing this and this court following those same guidelines. State v. Delarosa Flores, 59 wash. App.514, 517, 799 P.2d. 736(1990).

These type of leading questions and the content of the testimony brought forth should now be added as a factor to the misconduct committed by this prosecutor to reverse this case. State v. Torres, 16 wash.App. 254, 258, 554 P.2d. 1069(1976).

(C). False Testimony.

The prosecutor in this case had also known of false testimony that was brought to the Jury and it is fundamentally uinfair for the prosecutor to knowingly present to the Jury. United States v. LaPgae, 231 F.3d. 488, 491, 271 F.3d. 909(9th Cir.2000); Mooney, 294 U.S. at 112, 55 S.Ct. 340, Napue, 360 U.S. at 269, 79 S.Ct. 1173.

When C.D. starts into her testimony it becomes apparent that she is making false testimony when she states that she thinks the defendant touched her with one hand but she's not for sure and considering that this is suppose to be so traumatic she would have remembered this type of incident, 3 RP at 95;

Then states that she was too drowsy to get him to stop and when this defendant/Appellant had supposedly left the room, C.D. didn't say anything to anybody or leave the room to escape the situation, 3 RP at 98;

C.D. does not remember whether or not if the defendant/Appellant ever took off his pants, 3 RP at 102;

She then gets caught lying about who was all in the trailer during an incident, 3 RP at 116 (citing 3 RP at 99-100).

The witness stated having sex still hurt even after having sex 25x's which is completely false. 3RP at 132.

And then there was controversy about how she had stated that when these acts occurred that she had sustained injury to her back and then asked if she ever sustain any injuries C.D. states no and then when she was confronted about a prior statement she then tries to correct the false statement, 3RP at 135-136; and the prosecutor knew she was caught and objected. 3RP at 136.

This prosecutors failure to correct this testimony that they had known was perjured is also a Mooney-Napue violation. Hayes v. Brown, 399 F.3d.972, 978(9th cir.2005).

It is clear that (1) this testimony was actually false, (2) the prosecutor knew or should have known that the testimony was actually false; and (3) that the false testimony was material here. United States v. Zumo-Arce, 339 F.3d.886, 889, (9th cir.2003).

(D). Closing Arguments.

There was alot of statements made during the closing arguments that again the attorney of Record had failed to object to, and her failure to object to the prosecutor's remarks central to this case does constitute an incompetence of counsel that does require a Reversal in this case. State v. Johnston, 143 wash.App.19, 177 P.3d.1127(2007) (quoting state v. Madison, 53 wash.App. 754, 763, 770 P.2d.662(1989)).

This defendant does not waive any right to these errors in the closing argument. State v. Lindsay, 180 wn.2d.423, 441, 326 P.3d.125(2014).

This court must now review the context of these Statements made during closing arguments that were never objected to that caused this unfair trial as follows:

The prosecutor states that a lisp is a learning disability, 3RP at 240,

The State objected to the defense Attorneys closing but failed to show grounds and court sustained the objection.

3RP at 249.

The Prosecutor made a false statement (Subpernea Perjury) Stating that Mitchell never left C.D. alone at the campfire because Mitchell testified that C.D. was "never" at the campfires "ever", 3RP at 256;

Then states that the trailer incident was at a time that C.D. spent the weekend not during a campfire, 3RP at 256, now vouching for the witnesses credibility, which is established Law that is absolutely "not allowed". State v. Coleman, 155 wash.App.951, 957, 231 P.3d. 212(2010); review denied, 170 wash.2d.1016, 245 P.3d.772(2011).; State v. Smith, 162 wash.App.833, 849, 262 P.3d.72(2011); review denied, 173 wash. 2d.1007, 271 P.3d.248(2012); and it continues as the argument continues by stating opinion based statements about how the trailer incident was supposed to have happened, 3RP at 256-57; he discredits his own witness to help recredit his star witness/victim, 3RP at 257; and closes off by stating that none of the inconsistent statements made by C.D. should impact her credibility which it does. Horton, 116 wash.App at 901902 (see also): State v. Hoffman, 116 wash.2d.51, 94-95, 804 P.2d. 577 (1991); State v. Belgarde, 110 wash.2d.504, 505, 508-09, 755 P.2d.174(1988).

(e). Cumulative errors.

When this court now reviews these errors the court focus' more on whether the resultingprejudice could have been cured, State v. Emery, 174 wn.2d.741, 762, 278 P.3d.653(2012); and since there was ineffective Assistance involved it could not. Strickland v. Washington, supra.

The criterion always is, has such a feeling of prejudice been endangered or located in the minds of the Jury as to prevent a defendant from having a fair trial and that has occurred here in this matter. Emery, 172 wn.2d. at 762(quoting

Slattery v. City of Seattle, 169 wash.144, 148, 13 P.2d.464 (1932)); State v. Dhaliwal, 150 wn.2d.559, 578, 79 P.3d.432 (2003): State v. Brown, 132 wn.2d.529, 561, 940 P.2d.546(1997); State v. Ziegler, 114 wn.2d.533, 540, 540, 789 P.2d.79(1990). (see also): State v. Miles, 139 wash.App.879, 885, 162 P.3d.1169 (2007).

This prosecutor acts has amounted to conduct that is unlawful because (1) Suborning Perjury "is" a crime, (2) to do so "is" a violation of professional ethics; and (3) this is not a case of first impression; Anderson, 483 U.S. 640, 107 S.Ct.3034; (see also): State v. Monday, 171 wash.2d.667, 675, 257 P.3d.551(2011); and this is grounds for reversal. State v. Russell, 125 wn.2d.24, 86, 882 P.2d.747(1994), cert. denied, 514 U.S.1129 (1995).

This is why the cumulative error doctrine now applys to this case in chief. State v. Greiff, 141 wn.2d.910, 10 P.3d.390 (2000).

Did The State Fail To Prove Vulnerable or Incapable Resistance?

In this matter the state had amended the complaint and added an instruction of the victim being vulnerable or incapable of resistance. (see)(instructions 23-27). 3RP at 225-228.

The State had brought forth its evidence to prove this fact through a witness at trial stating the victim was developmentlly disabled and it lacked any type of foundation and the attorney of record had failed to object.RP at 145.

The failure to object to hearsay Statements is of constitutional mugnitude and "any" failure to object does now amount to ineffective Assistance of Counsel as is here. (see): In re Pers. Restraint of Gentry, 137 wash.2d.378, 400-01,972 P.2d. 1250(1999).

The issue of using thsese hearsay Statements had mislead the Jury into believing that the state had proven its theory. State v. Bennett, 161 wash.2d.303, 307, 165 P.3d.1241(2007).

The Prosecutor even went as far as going into the closing arguments and stating that the victim's lisp was a disability. 3RP at 240.

The state had failed to prove this issue of instruction and the following reason is why. 3RP at 228.

R.C.W. 71A.10.020(4), defines a developmental disability as a disability attributable to an illness which constitutes a substantial limitation to the individual.

As pertinent here "attribute" means to explain as caused or brought about by: regard as occurring in consequence of or account of. In re Estate of Blessing, 174 wash.2d. 228, 231, 273 P.3d. 975(2012).

Had this victim been disabled she would have been involved in some type of services for the disabled and developmentally disabled persons provided by the State of Washington. (see): RCW 71.A.16.020, W.A.C. 338-823-020.

"RCW 71A.10.020(4)" provides a definition of developmental disability:

Developmental disability means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or other neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age 18, which has continued or can be expected to continue indefinitely and which constitutes a substantial to the individual. Lynn v. Washington State Dept. of Social and Health Services; 170 wn.App.545, 285 P.3d.183(2012).

The construction of a statute such as this is plain in understanding and the State knows this was not proven. Dept. of Ecology v. Campbell & Gwinn, LLC, 146 wash.2d.1,9,43 P.3d.4 (2002).

Even if this court reviews De novo it will be in favor of the defendant/Appellant argument. State v. Jacobs, 154 wash.2d.

596,600, 115 P.3d.281(2005). (see also): State v. Watson, 146 wash.2d.947, 954, 51 P.3d.66(2002).

The statement made by the witness was nothing more than self serving Hearsay for the State to try and prove an un-factual case. (see): RP at 145. (see also): State v. Finch, 137 wash.2d.792, 824-25, 975 P.2d.967, cert. denied, 528 U.S. 922, 120 S.Ct.285, 145 L.Ed.2d.239(1999).

Defendant/Appellants trial counsel had failed to present an expert witness to rebut this issue or even object to the fact that the State failed to lay any any type of foundation for this issue which amounts to deficient performance and ineffectiveness. Bloom v. Caldron, 132 F.3d.1267, 1271, 1278(9th cir.1997).

This is a heavily rooted argument of the persuasiveness of this evidence. State v. Thomas, 150 wn.2d.821, 874-75, 83 P.3d.970(2004); Camarillo, 115 wash.2d.at 71, 794 P.2d.850.

Again this is an error that is "not a harmless error" due to it had "substantially and injuriously effected" and "influenced" in determining this Jury's verdict at hand. Brecht v. Abrahamson, 507 U.S. at 637, 113 S.Ct.1710(quoting Kotteakos v. United States, 328 U.S. 750, 776, 66 S.Ct.1239, 90 L.Ed.1557 (1946); O'Neal v. McAninch, 513 U.S. 432, 439, 115 S.Ct.992, 130 L.Ed.2d.947(1995); Gray v. Klauser, 282 F.3d.633, 651(9th cir.2002); United States v. Hitt, 981 F.2d.422, 425(9th cir. 1992); Payton v. Woodford, 299 F.3d. 815, 828(9th cir.2002).

There was clearly no factual support of evidence or testimony to prove this element that was presented in instructions 23-27. RP at 225-228. (see also): State v. Grewe, 117 wn.2d.211, 218, 813 P.2d.1238(1991); State v. Barnes, 117 wash.2d.701, 708, 818 P.2d.1088(1991); State v. Hutton, 7 wn.App.726, 728, 502 P.2d. 1037(1972); (see also): State v. Scott, 72 wn.App.207, 213, 866 P.2d.1258(1993).

The prosecutor had errored by having this witness testify about these type of facts creating an environment that he was an expert to the illness knowing that he had never went to school to be educated on this matter and had tainted the Jury especially

with the combination of having ineffective assistance of Counsel. In re Det. of Pouncy, 168 wash.2d.393. 229 P.3d.678 (2010)(citing United States b. Brooks, 508 F.3d.1205, 1210(9th cir.2007)). (see also): State v. Modica, 136 wash.2d.App.434. 445-46, 149 P.3d.446(2006).

These actions of this attorney not having an expert witness come forth is no different than when an attorney does hire one and then willfully and Neglegently keeps them in the dark about what the issue is about. Richey v. Bradshaw, 498 F.3d.344, 362-63(6th circuit 2007).

Did The Trial Court Error By Violating The Motion In Limine And SubMitting A Jury Instruction That is Not Curable In This Matter?

This argument comes to an issue of whether this irrequlariry caused enough prejudice to cause a mistrial or a reversal and this court must examine (1) the Seriousness of the irrequlariry (2) whether the irrequlariry involved cumulative evidence and (3) whether the trial court gave a proper curative instruction. State v. Hopson, 113 wash.2d.273, 284, 778 P.2d.1014(1989).

This court had ordered that no statements made by Mary Moran-George could be brought forth by the witness Mitchell Dysert Stating it would be seen as an inadmissible hearsay statement but it was done anyway. 3 RP at 153-57.

The courts curative instruction that was submitted (Instruction 6) made the issue even more prejudicial towards this defendant/Appellant. 3 RP at 217.

Generally, a party who fails to object to Jury Instructions in the trial court waives a claim of error on Appeal. RAP.2.5(a). State v. Schaler, 169 wash.2d.274, 282, 236 P.3d.858(2010).

But this defendant/Appellant had also received ineffective Assistance of Counsel along with a Jury Instruction that was not curative. State v. Scott, 110 wash.2d.685, 757 P.2d.492(1988) (quoting City of Seattle v. Rainwater, 86 wash.2d.567, 571, 546

P.2d. 450(1976)).

There was an inadmissible hearsay statement made by Mitchell Dysert from a conversation with Mary Moran-George that Mary stated that another person saw the defendant/Appellant and C.D. walking down the road and that the reason that was the reason that Mitchell called the police. 3RP at 153.

This was not only a Inadmissible hearsay Statement but it was prejudicial towards the defendant/Appellant due to it left open any reasonable type of a conclusion of why two people walk down the street due to this type of thing happens everyday with adults and children but since the nature of the charges made it prejudicial and that is why it was deemed inadmissible Hearsay and would not allow to confront and cross-examine this witness. 3RP at 153-57. (see also): ER802; State v. Neal, 144 wash.2d.607, 30 P.3d.1255(2001); State v. Johnson, 61 wash.App.539, 545, 811 P.2d.687(1991); State v. Aaron, 57 wash.App.277, 279-81, 787 P.2d.949.

This witness had testified to another witnesses Statements that has relevancy to this crime without Mary Moran-George being present at trial which "was" inadmissible and grounds for reversal in this Jurisdiction and others. State v. Irving, 114 N.J.427, 555 A.2d.575, 584-86(1989); State v. Hardy, 354 n.w.2d.21,23 (Minn.1984); Postell v. State, 398 So.2d.851, 854(Fla.Dist.Cf.App. 1981); Favre v. Henderson, 464 F.2d.359(5th cir.1972).

Inadmissible evidence that was ruled here in the motion in Limine can not now be made admissible by allowing the substance of this testifyings witnesses evidence to incorporate out of court statements by a declarant who does not testify. 3RP at 154-55. (see also): State v. Martinez, 105 wash.App.775, 782, 20 P.3d.1062 (2001); over rulled on other grounds by State v. Rangel-Reyes, 119 wash.App.494, 499 n.1, 81 P.3d.157(2003).

Even hearsay such as this with an applicable exception becomes inadmissible in violation of the clause if it is testimonial hearsay. Davis v. Wash., 547 U.S. 813, 126 S.Ct.2266, 165 L.Ed.2d.224(2006).

This court had stated that it was partial and it did not prejudice the defendant and allowed it with an instruction that is not curable. 3RP at 154-57.

When this court reviews the curative instructions that was given in"Instruction 6" it shows the prejudice to the defendant due to it states that what caused Mitchell Dysert to call the police is that he heard that the defendant/Appellant was walking down the street which no reasonable person would call the police for such an incident unless something flagrant was also said or known and this clearly prejudiced the defendant. RP at 217. (see also): State v.Belgarde, 110 wash.2d.504, 507-08, 755 P.2d. 174(1988); State v. Miles, 73 wash.2d.67, 68-71, 436 P.2d. 198(1968).

Making a statement to the Jury such as this had such an "Inflammatory Effect" on the Jury that it cannot be cured by a Jury instruction such as this; it had actually caused more damage. State v.Emery, 174 wash.2d.763,278 P.3d.653(2012)(quoting State v. Perry, 24 wash.2d.764, 770, 167 P.2d.173(1946)).

This court must now review this prosecutors purportedly improper remarks in the context of the entire argument, the issues in the case, the evidence addressed in the argument and the instructions that were given to the Jury and state that this was not a harmless error and this amounts to a reversable error. State v. Gregory, 158 wash.2d.759, 809-10, 147 p.3d.1201(2006). State v. Neal, 144 wn.2d. 600,611,30 P.3d.1255(2001)(quoting State v. Smith, 106 wn.2d.727,780,725 P.2d.951(1986)).

This trial courts instructions submitted to this Jury has relieved its burden"to the state" of proving all the required elements "beyond a reasonable doubt," thereby violating this defendant/Appellants Due Process and constituting manifest constitutional errors effecting his rights. State v. Dow, 162 wash.App.324, 330, 253 P.3d.476(2011)(citing State v. O'Hara, 167 wash.2d.91, 100-01, 217 P.3d.756(2009)); State v. Bennett, 161 wash.2d.303, 307, 165 P.3d.1241(2007).

This court must remember that the instructions given to the Jury carry a special weight due to they are treated as a

"Yardstick" by which to measure this defendants guilt or innocence and this weighed heavily against the defendant/Appellant prejudicing him. State v. Mills, 154 wash.2d.1, 6, 109 P.3d.415 (2005); (see also): Diaz v. State, 175 wash.2d.457, 474, 285 P.3d.873(2012).

The Judges acts on this curative instruction is error. State v. Boss, 167 wash.2d.710, 720, 223 P.3d.506(2009)(quoting State v. Becker, 132 wash.2d.54, 64, 935 P.2d.1321(1997)).(see also): State v. Levy, 156 wash.2d.725, 132 P.3d.1076(2006).

Review is De novo to instruction error. Gregoire v. City of Oak Harbor, 170 wash.2d.628, 635, 244 p.3d.924(2010).

Did The Trial Court Error On The Decision To Allow This Appellant The Right To Counsel And Also Caused Ineffectiveness?

(A). Conflict of Interest

When an Appellant raises an issue for the first time like this it must amount to manifest error to apply pursuant to R.A.P.2.5(a)(3).

There was an argument made that this appellant and his attorney of Record had a conflict of interest due to prior trial representation that occurred by his attorney Rogers-Kemp and stated that he did not want her to represent him in the next trial. 1RP at 1-14. (see also): Appendix At 1-3.

The Law is clear that the "Sixth Amendment" does "mandate" that a criminal defendant affords the right to effective assistance of counsel that is completely free from conflict and that did not happen here. Wood v. Georgia, 450 U.S.261, 271, 101 S.Ct. 1097, 1103,67 L.Ed.2d.220(1981); State v. Myers, 86 wash.2d. 419, 424, 545 P.2d.538(1976).

As soon as this attorney (Roger-Kemp) was allowed to discuss the conflict she specially had stated that there is a severe

conflict and believed she would not get paid and that is exactly what happened . 1 RP at 1-8.
She further stated that she "did not" want to do anything that would cost money because "she believed" she would not get paid and she is a sole propietor and could not afford it and that shows she made drastic cuts in her representation to see costs. 1 RP at 7. (see also): Appendix at 1-3

The prosecutor then argues that the defendant has failed to show sufficient grounds to receive a new attorney and states that it would be prejudicial to the states case because the interviews were done with the witness' and victim which clearly that lacks merit for argument and shows vindictiveness. 1 RP at 8-11. (see also): United States v. Goodwin, 457 U.S. 368, 372-85, 102 S.Ct.2485, 73 L.Ed.2d.74(1982).

The Judge makes a comment that a defendants financial situation is not something the court takes into consideration when it comes to whether an attorney stays on the case or not and that is manifest error on this fact alone which now will be argued. 1 RP at 13.

When it comes to manifest error that affects a constitutional Right the defendant must show actual prejudice. State v. Munguia, 107 wn.App.328, 340, 26 P.3d.1017(2001)(citing State v. McFarland, 127 wn.2d. 322, 333, 899 P.2d.1251(1995)).; review denied, 145 wn.2d.1023(2002).

The right to counsel does include a limited right to counsel of choice, but only applies to when a defendant is indigent. United States v. Washington, 797 F.2d.1461, 1465(9th cir.1986)(It is settled Law that under the sixth Amendment, criminal defendants "who can afford to retain counsel" have a "qualified Right" to "obtain counsel of their choice". (quoting United States v. Ray, 731 F.2d. 1361, 1365 (9th cir.1984).

In a recent United States Supreme Court decision of United States v. Gonzalez - Lopez, 126 S.Ct.2557, 165 L.Ed.2d.409, 2006 U.S. Lexis, 5165(2006), provided that it is an absolute right to counsel of choice.

The Sixth Amendment provides that in all criminal prosecutions, he accused shall enjoy the right to have the assistance of Counsel for his/her defense. They have also previously held that an element of this right of the defendant who "does not" require appointed counsel "to choose" who will represent him and this trial court had failed to allow this to happen. 1 RP at 13-14. (see also): Wheat v. United States, 486 U.S.153, 159, 108 S.Ct.1692, 100L.Ed.2d.140(1988); C.F.Powell v. Alabama, 287 U.S.45, 53, 53 S.Ct.55, 77 L.Ed.158(1932).

The court had further stated in Gonzalez-Lopez that: So also with the "6th Amendment" right to counsel of choice "it commands", not that a trial be fair, but that a particular guareentee of fairness be provided to wit, that the accused be defended by the counsel he believes to be best. The "constitution guarantees" a "fair trial" through the "Due Process Clause", but it defines the basic elements of a fair Trail largely through the Several Provisions of the "6th Amendment" including the "counsel Clause". In sum, the right at stake here is the right to counsel of choice, not the right to a fair trial and that right was violated because the deprivation of counsel was erroneous. No additional showing of prejudice is required to make the violation conplete. Id. at 126 S.Ct.at 2561.

It is clear thar the prosecutor didnot care or want this appellant to have a fair trial and for him to argue that the defendant at trial should not be allowed to get new counsel and have a continuance was both improper and prejudicial to the defendant in the context of this record that amounts to reversal. RP at 8-11. (see also): State v. Thorgerson, 172 wash.2d.438, 442, 258 P.3d.43(2011); State v. Fisher, 165 wash.2d.727, 747, 202 P.3d.937(2009); state v. Miles, 139 wash.App.879, 885, 162 P.3d.1169(2007); State v. Hughes, 118 wn.App.713, 727, 77 P.3d.681 (2003)(citing Stenson, 132 wn.2d. at 718). review denied, 151 wn.2d.1039(2004).

Both the United States and the Washington State Constitution provides a constitutional right to trial by Jury is to be

preserved and remain inviolate. U.S. Const. Amend.VI; Const. Art.I § 21.

The failure to provide a defendant with a fair hearing as here; 1 RP at 1-14, does violate minimal standards of Due Process. State v. Parnell., 77 wash.2d.503, 507-08, 463 P.2d.134(1969) (quoting Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct.1639, 6 L.Ed. 2d.751,(1961)); over ruled on other grounds by State v. Fire, 145 wash.2d.152, 34 P.3d.1218(2001).

An act of Prosecutorial vindictiveness will occur when the prosecutor acts against a defendant at trial response to the defendant prior exercise of constitutional or Statutory rights and is designed to penalize a defendant for invoking their legally protected right as has occurred here. United States v. Meyer, 810 F.2d.1242, 1245-46 (D.C. cir. 1987); U.S. v. Wall, 37 F.3d. 1443, 1447(10th cir.1994)(quoting United States v. Wood, 36 F.3d. 945, 946(10th cir.1994)).

The state will not be able to Justify it's actions that had occurred here. Wall, 37 F.3d. at 1447(quoting United States v. Raymer, 941 F.2d.1031, 1040(10th cir.1991).

"Rule of Professional Conduct 3.4(b) and 8.4(c)" do instruct that it is professional Misconduct for an attorney to falsify evidence or as here "engage in conduct involving dishonesty, fraud, deceit or misrepresentation as here by stating that this would prejudice the States case." RP at 8-11. (see also): In the matter of the Disciplinary Proceedings against Wade R.Dann. 136 wn.2d.67, 960 P.2d.416(1998).

The Sixth amendment is a crucial and fundamental in this aspect of this argument and the construction of this statute is clear in its plain language. Judd v. Am. Tel. & Tel. Co., 152 wash.2d.195, 202, 95 P.3d.337(2004)(quoting waste Management of Sattle, Inc. v. Utils. & Trans. Connin, 123 wash.2d.621, 627, 869 P.2d.1034(1994)). Dept. of Ecology v. Campbell & Gwinn, LLC, 146 wash.2d.9-10, 43 P.3d.4(2002); (see also): State v. Jacobs, 154 wash.2d.596, 600, 115 P.3d.281(2005); State v. J.P. 149 wash. 2d.444, 450, 69 P.3d.318(2003); State v. Watson, 146 wash.2d.947,

954, 51 P.3d.66(2002).

They also interpret statutes to harmonize them whenever its possible. State v. Powell, 167 wash.2d.672, 695-96, 223 P.3d.493(2009); over ruled on other grounds by State v. Siers, 174 wash.2d.269, 271, 274 P.3d. 358(2012).

The attorney had made it clear that she was not willing to put money into the case because she could not afford it and also made it clear to the courts that the defendant was not willing to pay for any of her services rendered that shows that she was not willing to pay for anything further either which this court created an issue of discovery being brought forth by the defense counsel. McKee v. AT & T Corp., 164 wn.2d.372, 387, 191 P.3d.845(2008); State V. Ford, 125 wn.2d.919, 923, 891 P.2d.712(1995); State v. Heffner, 126 wn.App.803, 810-11, 110 P.3d.219(2005).

This courts actions shows that it could have easily been a Brady Violation and would have resulted in a dismissal of the charges here with prejudice. State v. Woods, 143 wn.2d.561, 582, 23 P.3d.1046(2001). (see also): State v. McCormick, 166 wn.2d.689, 706, 213 P.3d.32(2009)(quoting State ex rel Carroll v.Junker, 79 wn.2d.12, 26, 482 P.2d.775(1971)); Brady v. Maryland, 373 U.S. 83, 83 S.Ct.1194, 10 L.Ed.2d.215(1963).

The Sixth Amendment must guarantee compulsory process confrontation and assistance of effective and conflict free counsel to help ensure a fair trial and that did not occur here. RP 1-258.. (see also): Faretta v. California, 422 U.S. 806, 818-21, 95 S.Ct.2525, 45 L.Ed.2d.562(1975); Washington v. Texas, 388 U.S. 14, 19, 87 S.Ct. 1920, 18 L.Ed.2d1019(1967); Herring v. New York, 422 U.S.853, 862, 95 S.Ct.2550, 45 L.Ed.2d. 593(1975).

This trial court not allowing this defendant/Appellant his own counsel caused damage to his defense of individual dignity and autonomy; McKaskle v. Wiggins, 465 U.S. 168, 176-77, 104 S.Ct.944, 79 L Ed.2d.122(1984); and this did not allow the defendant/Appellant to present his case in his own way; State

v. Jones, 99 wash.2d.735, 742, 664 P.2d.1216(1983)(quoting Frendak v. United States, 408 A.2d.364, 376(D.C.1979); regardless if the defendant is illiterate or not competent to the understanding of his rights. Scott v. Bednar, 52 N.J. Super. 439, 145 A.2d.643(1958); Pac. Co. v Gastelum, 36 Ariz. 106, 283 P.719 (1929). Bolser v. Clark, 110 wash.App.895, 903 P.3d.62(2002) (citing Barnes v. Cornerstone Inus., Inc., 54 wash.App.474, 478, 773 P.2d.884(1989); Rodriguez v. Dept. of Labor & Indus., 85 wash 2d.954-55, 540 P.2d.1359(1975);; In re Disciplinary Proceeding against Blanchard, 158 wn.2d.317, 332, 144 P.3d.286(2006)(quoting In re Disciplinary proceeding against Christopher, 153 wn.2d.669, 682, 105 P.3d.976(2005).

It is clear that from the beginning of this Trial that the presiding Judge had shown bias and prejudice towards the Defendant/ Appellant by his decision to deny this request. 1 RP at 13-14.

This act is violated when it shows there is any type of appearance of fairness doctrine being violated as it was here. 1 RP at 13-14. (see also): State v. Bilal, 77 wash.App.720, 722, 893 P.2d.674(1995); and this trial Judges decision here to not allow new counsel is clearly an abuse of discretion. Mayer v. Sto. Indus., Inc., 156 wash.2d.677, 684, 132 P.3d.115(2006). (see also): In re Marriage of Littlefield, 133 wash.2d.39,47, 940 P.2d. 1362(1997)(untenable reason on incorrect standard). State v. VY Thang, 145 wash.2d.630, 642, 41 P.3d.1159(2002). McMillan v. Castro, 405 F.3d.405, 409-10(6th cir.2005).

This court in error of this magnitude does not even have to look into a Brecht Harmless ErrorTest due to it is plain and constitutional in magnitude. Brecht v. Abrahamson, 507 U.S. at 637, 113 S.Ct.1710(quoting Kotleakos v. United States, 328 U.S.750, 776, 66 S.Ct.1239, 90 L.Ed.1557(1946)).

Every defendant when it comes to being able to pay for their own counsel is also protected by the "Fourteenth Amendment Right" to equal protection and not allow the courts to "pick and choose" who is guaranteed this right. State v. Hirshfelder, 170 wash.2d. 536, 550, 242 P.3d.876(2010)(quoting Am.Legion Post No.149 v. Dept. of Health, 164 wash.2d.570, 609, 192 P.3d.306(2008)(quoting Madison v. State, 161 wash.2d.85, 103, 163 P.3d.757(2007);(see

also): Griffin v. Eller, 130 wash.2d.58, 65, 922 P.2d.788(1996) (citing in re Runyan, 121 wash.2d.432, 448, 853 P.2d.424(1993)), westerman v. Cary, 125 wash.2d.277, 294, 892 P.2d.1067(1994); State v. Schaf, 109 wash.2d.1 17-19, 743 P.2d.240(1987).

This is a situation that equal protection "required" that he receive like treatment and this trial court failed. State v. Coria, 120 wn.2d.156,169,839 P.2d.890(1992). (see also): Buckley v. Valeo, 424 U.S.1, 93, 96 S.Ct.612(1976), Bolling v. Sharpe, 347 U.S.497, 499, 74 S.Ct.693(1954); Feguson v. Skrupa, 372 U.S. 726, 732, 83 S.Ct.1028(1963), Lindsley v. Natural Carbonic Gas Co. 220 U.S.61, 78-79, 31 S.Ct.337(1911).

This appellate attorney is clearly ineffective for failing to raise such a "plain error" and shows his intention to allow an unjust conviction stay and to take advantage of this Appellants disability to not recognize it til its too late in this direct appeal. In re personal Restraint Petition of Orange, 152 wash.2d. 795, 814, 100 P.3d.291(2004); Smith v. Robbins, 528 U.S.259, 285, 120 S.Ct.746, 145 L.Ed.2d.756(2000).

This court must now review this issue of the Challenge to counsel Denovo. Mannhalt v. Reed, 847 F.2d.576, 579(9th cir), cert. denied, 488 U.S.908, 109 S.Ct.260, 102 L.Ed.2d.249(1988).

(B). Amending Complaint

It shows by the record that there was already a conflict of Interest between the attorney and this defendant/Appellant in regards to there being lack of trust and there would be non-payment for services which would obviously cause an attorney to lack in their representation and cause an act of ineffective assistance Just as in any other type of service where they knew they were not going to get paid. State v. Tilton, 149 wash.2d.775, 783-84, 72 P.3d.735(2003); Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct.2052, 80 L.Ed 2d.674(1984).

The prosecutor had become upset that the defendant/Appellant would not take a plea-agreement prior to trial and decide to not amend the charges to a more serious crime with a more serious penalty but had also expanded the timeline of the incident at hand. 1 RP at 23, 2 RP 33-35.

This is clearly an act of Vindictive Prosecution in the Pre-trial setting. U.S. v Wall, 37 F.3d.1443, 1447(10th cir.1994) (quoting U.S. v. Wood, 36 F.3d.945, 946(10th cir.(1994)); United States v. Meyer, 810 F.2d.1242, 1245-46(D.C. cir.1987).

It is State Law that the trial court may allow the state to amend the information at any time before the verdict, but only as long as the substantial rights of the defendant are not prejudiced and this defendant/Appellants rights were. C.r.R.2.1(d); (see also): State v. Schaffer, 120 wash.2d.621, 845 P.2d.281(1993); State v. Gosser, 33 wash.App.428, 435, 656P.2d.514(1982).

The State added an aggravating factor and had failed to produce any direct evidence to prove the aggravating factor only Hearsay Statements were made, and never was expert witness or school Records shown that there was ever any type of disability to show that the victim went to any special classes. 3RP at 145.

There is no evidence to support this conviction; U.S. ex rel Victor v. Yeager, 330 F.Supp.802, 806(D.N.J.1971); and now violates this defendants/Appellants Constitutional and Due Process Rights. Fiore v. White, 531 U.S.225, 228-29, 121 S.Ct.712, 148 L. Ed.2d.629(2001); Richey v. Mitchell, 395 F.3d.660, 672(6th cir.2005); In re Winship, 397 U.S.358, 90 S.Ct.1068, 25 L.Ed.2d. 368(1970).

Due to ineffective assistance not objecting to the Amendment of this complaint waived the defendant/Appellants right to challenge the amendment; State v. Schaffer, 120 wash.2d.at 616, 621-22; and the way the evidence was produced through Hearsay Statements of the witness without factual proof relieved the burden of the state to prove the case. State v. Hickman, 135 wash.2d.97, 102-03, 954 P.2d.900(1998)(quoting Tonkovich v. Dept. of Labor And Inds., 31 wash.2d.220, 225, 195 P.2d.638(1948)). (see also): State v. Teal, 152 wash.2d.333, 337, 96 P.3d.974 (2004)

During this process this attorney of record should of objected to the amending of the complaint at that point due to it severely affected the plea-negotiations. 2RP at 38. (see Also): State v. Osbourne, 102 wash.2d.87, 99, 684 P.2d.683(1984).

When the State decided to not only add aggravation factors it had also changed or added new dates of the incident and that changed "only" defense attroney's strategy to fight a case and whether or not this attorney should now re-consider to communicate actual offers, discuss tentative plea negotiations and discuss the strengths and weaknesses of the defendants case so that an informal decision on whether to take the States offer as could of been done here. State v. James, 48 wash.App.353, 362, 739 P.2d. 1161(1987); State v. A.N.J., 168 wash.2d.91, 111-12, 225 P.3d.956 (2010). (see also): Lafter v. Cooper, U.S.--132 S.Ct.1376, 182, L.Ed.2d.(2012); and Missouri v.Frye--132 S.Ct.1399, 182 L.Ed.2d.379 (2012).

(C). Defendant Performance and Prejudice.

It will be shown that since there was already a conflict of interest in this case that it ultimately affected her performance in the rest of the matter 1RP at 1-14.

The Federal and State Constitutions guarantee a criminal defendant the right to effective assistance of counsel. U.S. Const. Amend.VI; Wa.Const. Art. 1 § 22.

The defendant/Appellant is now claiming that what he received here was ineffective assistance here and he had "pre-warned" the court that there was issues and he had his "own money" to pay for another attorney and the court ignored the issue and the result was deficient performance and resulting Prejudice; 1 RP 23, 2 RP33-35, 38, 40, 46, 54, 72, 79, 3 RP 93, 102, 106, 132, 137, 139, 145, 180-88, 190-91, 240,256,257,258, and this will show in accord here. State v. Tilton, 149 wash.2d.775, 783-84, 72 P,3d.735; State v. McFarland, 127 wash.2d.322, 334-35, 899 P.2d.1251(1995); Strickland v. Washington, 466 U.S.668, 687-88, 104 S.Ct.2052, 80 L.Ed.2d.674(1984);

United States v. Cronic, 466 U.S.648, 654, 104 S.Ct.2039, 80 L.Ed. 22d.657(1984)(quoting McMann v. Richardson, 397 U.S.759, 771 n.14, 90 S.Ct.1441, 25 L.Ed.2d.763,(1970); State v. Robinson, 153 wash. 2d.689, 694, 107P.3d 90(2005).

(c) (1). Failed to Object.

There are multiple incidents that this attorney of record allowed issues go without any type of argument or objection to the prosecutors remarks on testimony central to this State case at hand and these failures constituted incompetence od counsel that now Justifys Reversal. State v. Johnson, 143 wash.App.19, 177 P.3d.1127(2007)(quoting state v. Madison, 53 wash.App.754, 763, 770P.2d.662(1989).

This trial attorney during representation should of raised an objection during the following times:

The prosecutor add aggravators and elements and a day more of when the crime occurred, 1RP at 23, 2RP33-35, 38;

The prosecutor had lead the witness into an answer he wanted; 3RP 93, 102, 106, 137, and 139;

The victim stated that it stopped hurting having sex after the defendant went to Jail; 3RP 132, and this also caused a mistrial, and a violation of the Motion in limine, which affected the Jurys Verdict. State v. Thompson, 90 wash.App.41, 46, 950 P.2d.977(1998); State v. Clemons, 56 wash.App.57, 62, 782 P.2d.219 (1989); Russell, 125 wash.2d. at 85, 882 P.2d.747,(quoting State v. Crane, 116 wash.2d.315, 332-33, 804 P.2d.10(1991); (see also): State v. Mak, 105 wash.2d.692, 701, 718 P.2d.407(1986).

The States witness Mitchell stated that C.D. was in a Lap Program for being developmentally disabled without laying any foundation and misstated what that type of program is.(see): Appendix at 13-14 (see also): 3RP 145.

The examining doctor given the defendant/Appellants full name that allowed the doctor review his criminal history to making her report and making flagrant statements about how the hymam break could have occurred. 3RP 176-77, 180-88; (see also): Appendix at 6-12;

There were crucial exhibits that the Jury should of been allowed to review and when the State did not want them in should of objected. 3RP212;

During closing arguments this trial attorney should of objected to multiple statements that were flagrant and ill-intentioned towards the defendant as follows:

The prosecutor stated a lisp was a learning disability; 3 RP at 240;

The Judge called for a recess after the State had rested on its closing arguments. 3RP 243-44.

The prosecutor made a false statement stating that Mitchell never left C.D.alone at the campfire because Mitchell testified that "C.D." was never at the campfire ever. 3RP 256; and that the trailer incident alone happened now when it was not at the campfire; Id. and stated giving credibility to the victim and making opinion based statements of "C.D's" statements and issues of the trailer incident, 3RP256-57;

Then the prosecutor tried to discredit his own witness that is favorable to the defendant. 3RP 257;

and makes a comment that none of C.D.'s inconsistent statements made should impact her credibility. ID

During the sentencing the prosecutor makes flagrant statements that are unfounded. 5 RP at 25;

There was an error on the verdict forms that the Jury made its determination. 5 RP at 46-47.

These failures to object does amount to ineffective Assistance of counsel. Gentry wash.2d. at 378, 400-01, Sexsmith, 138 wash.App. at 497, 509 (See also): State v. Horton, 116 wash.App.922(2003).

(D)(1). Ineffective Appellate Counsel

When the court reviews these matters it will show that Appellate Counsel "Kent Underwood" was ineffective for failing to raise crucial points and failed to send transcripts to this Defendant/Appellant. In re Pers. Restraint of Orange 152 wash.2d.

795, 814, 100 P.3d.291(2004); Smith v. Robbins, 528 U.S. 259, 285, 120 S.Ct.746, 145 L.Ed.2d.756(2000).

(D) (2) Failed to Investigate by Both Attorneys.

There is on the record that either attorney can be found to be ineffective for failing to bring forth in this matter had she used Due Diligence. State v. Macon, 128 wn.2d.784, 799-800, 911 P.2d.1004(1996).

The trial attorney had admitted there was no investigation into C.D.'s Illnesses, 2 RP36; did not want to look into the issues of the parents domestic disputes, 2RP 40; she failed to provide the court with the necessary divorce papers, 2RP46, 50; made a stipulation to statements made by witnesses 2RP54; Failed to research into making a proper opening statement; 2RP72; there was no investigation into the officers investigation and could not cross-examine. 2RP79; never talked to Tony or Gus; 3RP96; Never brought forth any expert testimony to contradict the states expert witness; 3RP 171-191; Failed to investigate to do a proper pre-sentence Investigation Report prior to sentencing. 4RP 7-18.

This shows that there was a failure to investigate into these cases and cause ineffective and deficient performance. State v. Davis, 152 wash.2d. at 721, 101 P.3d 1(quoting Strickland, 466 U.S. at 690-91, 104 S.Ct.2052)).

In re Pers. Restraint of carter, 172 wn.2d.917, 263 P.3d.1241 (2011).

These are acts of dishonesty as well as deciet violation R.P.C.'s 4-8(d). In the Dis. matter of Michael Robert Fletcher, No.03-272; slip op. at 5-6(2004); In the matter of Displinary Proceedings against Wade R.Dann, 136 wn.2d.67, 960 P.2d.416(1998).

(e). Judicial Misconduct.

The Trail at times had shown to be a little biased and

prejudicial towards the defendant at trial due to his past and current conviction in another court. Wolfkill Feed and Fertilizer Corp. v. Martin, 103 wash.App.836, 841, 14 P.3d.877(2000).

This appellant has to ask this court to now review some of these matters for abuse of discretion and under the appearance of fairness doctrine. Id.

The Judge did not allow the defendant to get new counsel violating his sixth Amendment Rights at the very beginning of trial: 1RP 13-14;

Then made the presumption that the divorce was due to the nature of the crimes siding with the State; 2 RP 50;

Allowed a violation of the motion in limine that also had no probative value and prejudiced the defendant 2 RP 58; 3 RP 153, 154-55, 157.

The trial Judge created a Jury instruction that had prejudiced the defendant even more; 3RP 217;

Had a recess after the states opening argument to his closing argument; 3 RP 243-44.

Upheld an objection by the State that was unfounded, 3 RP 249;

Was not at the Jury questioning and had another Judge step in; 4 RP 1-9;

These errors are not harmless in any fashion.

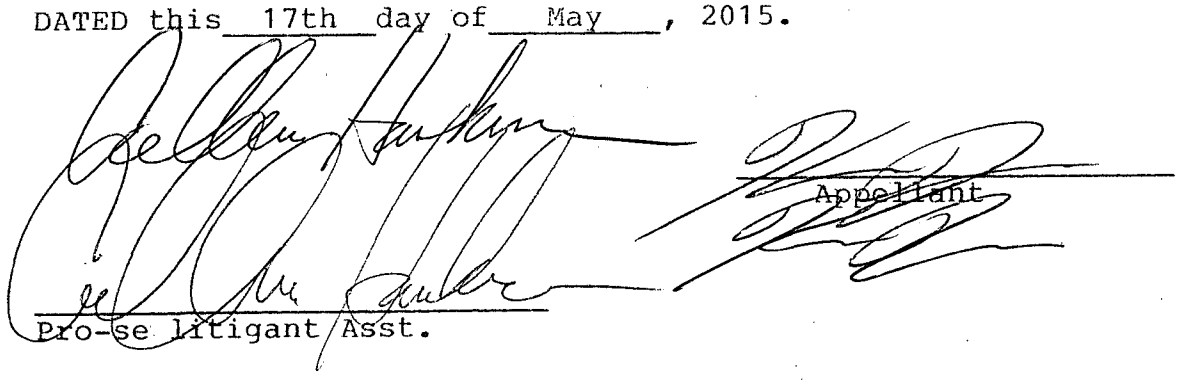
The appearance of fairness doctrine is violated here due to any reasonably prudent and disinterested observer would conclude that this defendant did not obtain a fair, impartial and neutral trial. State v. Bilah, 77 wash.App. 720, 722, 893 P.2d.674(1995); State v. Levy, 156 wash.2d.709, 721, 132 P.3d.1067(2006); State v. Devincentis, 150 wash.2d.11, 17, 74 P.3d.119(2003)(citing State v. Walker, 136 wash.2d.767, 771-72, 966 P.2d.883(1998); State v. VY Thang 145 wash.2d.630, 642, 41 P.3d.1159(2000).

III. Conclusion.

The Appellant must now request that these errors that occurred at trial caused such irreparable Damage that it Dismiss the case "or" at the minimum Reverse these charges and order a New trial with instructions.

I swear under penalty of perjury that all Statements are true to the best of my knowledge.

DATED this 17th day of May, 2015.



Appellant

Pro-se litigant/Asst.

APPENDIX

TERI ROGERS KEMP, P.S.
Teri Rogers Kemp Attorney at Law, P.S.

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April 24, 2015

OFFICE OF DISCIPLINARY COUNSEL
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Dear Office of Disciplinary Counsel;

Re: ODC File 15-00546

I received the grievance from Harold Spencer George, re: Pierce County Cause No. (s): 13-1-01810-3, 13-1-03842-2, 13-1-01811-1

I represented Mr. George over twelve (12) months ago. I received the request from him for his file at the same time that I received the Bar Complaint, on or about April 4, 2015. Since April 4, 2015, I have worked diligently to copy the file, for both the Washington State Bar Association, and for Harold S. George. Mr. George will receive his file shortly. Except, I will not however, pursuant to Rules of Professional Conduct, give the police reports or other type discovery that was provided by the state, to Harold S. George.

I did three back to back trials for Mr. George.

I went to trial on Mr. George on Pierce County Cause No. 13-1-01810-3 on February 6, 2014.

I went to trial on Mr. George on Pierce County Cause No. 13-1-01811-1on February 18, 2014.

I went to trial on Mr. George on Pierce County Cause No. 13-1-03842-2 on March 25, 2014.

Mr. George and I were confident that the outcome of the trial of the case ending in 810-3 would be an acquittal. When the court found Mr. George guilty, Mr. George was angry. Despite Mr. George's anger, we were able to work together through the next trial. By the time that the third trial began, Mr. George had no confidence in my ability to proceed and did not want to work with me. The third trial was difficult because of this. I believe that

all three trials were "clean", with no valid basis to appeal; and, that that is the true impetus behind Mr. George's grievance.

I did miss court on March 14, 2014. My youngest child was hospitalized because he had an abscess in his throat, which proved difficult to get rid of. I notified the court of my sudden and unexpected unavailability. The court rescheduled the hearing to the following Friday; as were each other of my hearings that I was unavailable to attend, rescheduled to the following Friday as well. I visited Mr. George on that same day that I was unavailable for the hearing. During our visit, amidst our two hour long conversation, I explained my son's illness and my unavailability for court that day. At that time, Mr. George expressed understanding; and in no way did my absence affect my ability to try my case.

I did stay home from court when I was very ill with a cold. I was well enough the following day and proceeded to court and trial. In no way did my illness or my absence affect my ability to try my case.

I did arrange coverage for a sentencing. My coverage was a competent, skilled, criminal defense attorney who has practiced felony matters, including Class A's; for over 15 years. My coverage even was prepared to go forward with the sentencing, however there was difficulty when my presentence report was somehow not available to the court. The sentencing hearing was rescheduled to a date the following week. I was in trial in King County during the time, and when the King County Jury had a question during deliberations, that court ordered that I appear to answer.

Nonetheless, Mr. George was sentenced within the 40-day speedy trial rule. In no way, was I hampered in my ability to represent Mr. George. The state sought 600 months; Mr. George received an exceptional sentence, albeit far less than the state sought. Indeed, my continued advocacy avoided the sentence the state sought. The court sentenced Mr. George based on factors to include the developmental disability of the victim and the two prior victims, crimes of the similar circumstances.

The only reason that I asked to withdraw on the day of trial was because Mr. George instructed me to.

The only reason that Mr. George asked me to withdraw was because he was angry that he had been convicted of molesting his step-daughter in the first trial.

The day before the third and last trial, wherein Mr. George was convicted of molesting Cheyenne Dysart, I drove from Seattle to Tacoma to visit him in the Pierce County Jail, for final trial preparation. Mr. George came out of his cell, told me I was fired, then turned on his heel and walked away. The following morning at trial, Mr. George instructed me to tell the court that I was fired.

I explained to Mr. George that, this was the first day of trial. I was prepared for trial. It is unlikely that the court would allow counsel to withdraw on the day of trial, unless there

are extreme circumstances. The only two possible type circumstances were, a breakdown in communication between him and me; and/or, that the client refused to pay as promised. Even then, I explained to Mr. George, the court likely would not allow the withdrawal. Mr. George instructed me to fire myself, anyway. At the same time, he then informed me that already, he had instructed the Puyallup tribe to not to pay me any more money. This was news to me.

I informed the court that Mr. George did not want me to represent him, that there was a breakdown in communication and further, that Mr. George refused to pay me for the trial that I was presently conducting and the remainder of my fee that I earned for the work that already I had done. The court denied the motion to withdraw and instructed Mr. George to proceed to trial.

Regarding my performance at trial. I knew all three of my cases from the front of the cover to the back. Mr. George and I spent many, many hours preparing for trial, together, during my innumerable visits to the Pierce County Jail in Tacoma. The work for all three trials had already been done weeks before the day I asked to withdraw from the third trial.

I paid for each transcript of each essential witness in each trial, at my own expense. Transcripts were prepared by a certified court transcriptionist and cost over $1200. Mr. George has not repaid the expense cost of the transcripts. The transcripts were used in trial during cross-examination.

Each trial basically had the same witnesses and the same defense. I had developed my strategy for all three trials, interviewed witnesses and knew the facts of each separate case well.

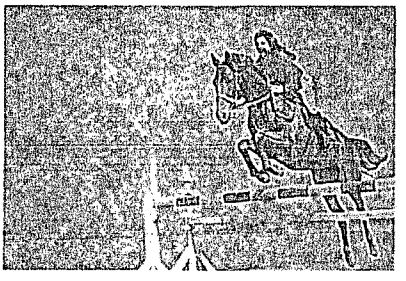
I did not throw my trial(s).

Thank you.

Teri Rogers Kemp
cc: /file
WSBA, Felice P. Congalton

Bicycles, Horses, and Hymens

BY CRISTEN CONGER / POSTED MAY 11, 2011



A high school listener wrote Molly and me with a perplexing inquiry that probably every girl has pondered at some point: How can your hymen break outside the bedroom? To be precise, she asked whether bike riding could tear that cultural anxiety-inducing tissue, which also brought up a similar question of whether horseback riding could do the same thing.

Despite the hymen serving no biological purpose whatsoever, it's probably the most controversial part of the female anatomy (although not all women are born with hymens). The amount of hymen tissue also varies from person to person, much like almost everything in that general body region for women and men alike. And although we associate a broken hymen with initial intercourse, there are myriad manners for that tenuous tissue to tear, as **Discovery Health explains:**

> *But it is scientific fact that the hymen can be separated for reasons quite unconnected to sexual intercourse. It can separate when the body is stretched strenuously, as in athletics; it can be separated by inserting a tampon during menstruation or through masturbation; and sometimes it is separated for no apparent reason.*

See that? "No apparent reason."

Go Ask Alice! adds to the laundry list of activities that could affect the hymen:

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> *...hymens can break without women knowing it. Strenuous activities, such as bicycle riding, horseback riding, stretching, or dancing, can also cause the hymen to break. Lastly, a woman's hymen could have already been broken or stretched by sexual activity, even if she has not had a penis inside of her.*

So could riding bikes and horses break a hymen? Sure! But so could plenty of other things, **such as pap smears**, which is why the best answer might be to advise girls to ignore the hymen hype and go right ahead with whatever cycling or equestrian pursuits they desire.

And as for whole hymen-virginity issue, here's a knowledge nugget to tuck away for a rainy day: Women can get pregnant while their hymens are perfectly intact. Sperm anywhere near the vaginal canal can potentially travel inside and say "Howdy do!" to a egg, *et voila*. As Discovery Health says, "An intact hymen should not be considered a form of birth control."

*Follow Cristen & Molly from Stuff Mom Never Told You on **Twitter** and **Facebook**.*

Tagged HYMENS, VIRGINITY, WOMEN'S HEALTH

Glossary of terms in child sexual abuse.

***Modified from APSAC Descriptive Terminology in Child Sexual Abuse**

Abrasion An area of body surface denuded of skin or mucous membrane by some unusual or abnormal mechanical process. An injury.

Elasticity The state or quality of being distensible. Flexibility; adaptability. Example: A hymen that changes its configuration with the different examination methods and/or positions.

Estrogenized Effect of the female sex hormone, estrogen, on the genitalia. The hymen takes on a thickened, redundant and pale pink appearance as the result of estrogenization. *These changes are observed in infants, with the onset of puberty, and as the result of exogenous estrogen.*

Friability A term used to describe tissues that bleed (abnormally) easily. Example: The friability of labial adhesions, that when gently separated may bleed. Friability of the posterior fourchette – A superficial breakdown of the skin in the posterior fourchette (commissure) when gentle traction is applied causing slight bleeding. *A non-specific finding due to many different underlying causes.*

Hyperemia An excess of blood in a part; engorgement of the blood vessels. *(A non-specific finding.)*

Intracrural Intercourse The act of rubbing the penis between the labia of the female without entering the vagina. ***(Also termed intralabial, dry or vulvar intercourse)***

Labia Majora Rounded folds of skin forming the lateral boundaries of the vulva. *Commonly injured in accidental straddle injuries.*

Labia Minora Longitudinal, thin folds of tissue within the labia majora. In the prepubertal child, these folds extend from the clitoral hood to approximately the midpoint on the lateral wall of the vestibule. In the adult, they enclose the vestibule and contain the opening to the vagina. *Commonly injured in accidental straddle injuries.*

Labial Adhesion The result of adherence (fusion) of the adjacent, outer-most, mucosal surfaces of the posterior portion vestibular walls. This may occur at any point along the length of the vestibule although it most commonly occurs posteriorly (inferiorly). *A common finding in infants and young children. Unusual to appear for the first time after 6 to 7 years of age. May be related to chronic irritation.* ***(Also called labial agglutination.)***

Linea Vestibularis A vertical, pale/avascular line across the posterior fourchette and/or fossa navicularis, which may be accentuated by putting lateral traction on the labia majora. *A common finding that is found in girls of all ages including newborns and adolescents.*

Laceration A transaction (cut) through the skin, mucous membranes or deeper structures of the body. A tear through the full thickness of the skin or other tissue.

Leukorrhea A whitish, viscid (glutinous) discharge from the vagina and uterine cavity through the cervical os. *A normal finding in adolescent and adult females.* ***(The term physiologic discharge is sometimes used.)***

Petechiae Small, pinhead sized hemorrhages caused by leaking capillaries. May be singular or multiple. *Frequently caused by increased pressure within the blood vessel, as with straining during vomiting or with strangulation. May also be caused by a bleeding disorder, infection or localized trauma.*

Scar Fibrous tissue which replaces normal tissue after the healing of a wound. *May be difficult to prove on clinical grounds alone, such as during visual inspection or palpation.*

Transection A cutting across. Division by cutting or tearing transversely.

Complete A tear or laceration through the entire width of the hymenal membrane extending from its edge to the vaginal wall attachment.

Partial A tear or laceration through a portion of the hymenal membrane not extending to the attachment to the vaginal wall.
The strict definition of the term "transaction" implies a complete tear through the entire width of a membrane. Therefore, the use of the term partial tear is suggested.

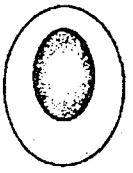
Vascularity, increased or prominent Dilation of existing superficial blood vessels.

Vulvar Coitus Rubbing of the penis between the labia of the female without entering the vagina. ***(Also called intralabial, dry or intrcrural intercourse.)***

Terminology involving the hymenal anatomy

Hymen A membrane which partially or rarely, completely covers the external vaginal orifice. Located at the junction of the vestibular floor and the vaginal canal.
The external surface is lined with highly differentiated squamous epithelium with loose cornification. The internal surface is lined with vaginal epithelium. Origin is the external vaginal plate of the urogenital sinus.
Wide anatomic variation in types: annular, crescentic, fimbriated (denticular), septate, cribriform, imperforate. *All females with a normal Mullerian system and normal external genitalia have this structure.*

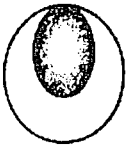
Annular The hymenal membrane extends completely around the circumference of the vaginal orifice.



Caruncular Myrtiformis Small elevations of rounded mounds of hymen encircling the vaginal orifice. *Found in sexually active and postpartum females.* ***(Also called Caruncular hymenales)***

Cleft/notch An angular or "V"-shaped indentation on the edge of the hymenal membrane. May extend to the muscular attachment of the hymen.

Crescentic Hymen with anterior attachments at approximately the 11 o'clock and the 1 o'clock positions with no hymenal tissue visible between the two attachments. *The most common hymenal configuration in the school aged, prepubertal child.*



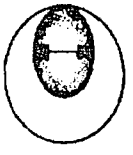
Cribriform A hymen with multiple openings. A congenital variant.

Erythema of the Hymen A redness of the hymenal membrane produced by congestion [engorgement] of the capillaries. *A non-specific finding. May result from a variety of irritants as well as direct trauma.*

Fimbriated Hymen with multiple projections or indentations along the edge, creating ruffled appearance. *A congenital variant.* ***(Also called denticular hymen.)***

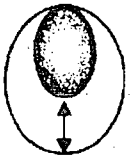
Hymenal Orifice The opening in the hymenal membrane which constitutes the entrance or outlet of the vagina.

Hymenal Orifice's Diameter The distance from one edge of the hymen to the opposite edge of the hymenal orifice. The most common measurement used is the horizontal (lateral) diameter. *Hymenal orifice size varies with the age of the child, the examination technique and other factors such as the state of relaxation.*

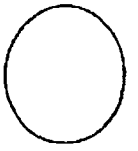


orifice

Hymenal Width The distance between the opening of the hymen and its point of attachment.



Imperforate A hymenal membrane with no opening. *An uncommon congenital variant.*



Inflammation (Hymenal) A localized protective response elicited by injury or destruction of tissues. *A non-specific finding that can result from a variety of causes including trauma.*

Intravaginal Columns Raised (sagittally oriented) columns most prominent on the anterior wall with less prominence on the posterior wall.

Laceration of the Hymen An injury or tear of the hymenal membrane that is usually associated with a blunt force penetration.

Median (Perineal) Raphe A ridge or furrow that marks the line of union of the two halves of the perineum.

Mound (Bump) A solid, localized, rounded and thickened area of tissue on the edge of the hymen.

Notch/cleft (Hymenal) An angular or "V" shaped indentation on the edge of the hymenal membrane. May extend to the muscular attachment of the hymen. *A relatively sharp, "V"-shaped notch or cleft, that persists during multiple examination techniques may be evidence of hymenal trauma.*

Perihymenal Pertaining to tissues surrounding the hymen.

Perihymenal Bands Bands of tissue lateral to the hymen that form a connection between the perihymenal structures and the wall of the vestibule. *A less frequently observed finding than periurethral bands. Accentuated when the labial traction examination method is used. Usually a congenital variant. Rarely caused by trauma.* **(Also termed pubo-vaginal bands.)**

Redundant Hymen Abundant hymenal tissue which tends to fold back upon itself or protrude. *A common finding in females whose hymenal membranes are under the influence of estrogen (both infants and adolescents).*

Rolled Edges The edge (border) of the hymen which tends to roll inward or outward upon itself. May unfold through the use of the knee-chest position, application of water, through manipulation with a moistened Q-tip or other techniques. *A normal variant most commonly noted in prepubertal children.*

Rounded Edges Hymenal edges that appear thick and rounded and do not thin out with the different examination techniques, the application of water or other maneuvers used to unroll an elastic, redundant hymen. *May be the result of hormonal influence, poor relaxation, and inflammatory reaction, the attachment of an underlying intravaginal longitudinal ridge or past injury.*

Scalloped Edges A series of rounded projections along the edge of the hymen. *A common finding in early adolescence.*

Septal Remnant A small appendage (tag) attached to the edge of the hymen. Commonly located in the midline on the posterior rim. Frequently associated with a concomitant thickened ridge on the hymen which extends from the appendage (septal remnant) to the muscular attachment of the vaginal introitus. May be associated with similar appendage on opposite side of hymenal orifice. (Similar to hymenal tags.) *Considered to be a normal variant. A diagnosis by implication unless an intact septum was previously seen.*

Septated Hymen A hymen with band(s) of tissue, which bisects the orifice creating two or more openings. *A congenital variant.*

Tag (Hymenal) An elongated projection of tissue arising from any location on the hymenal rim. Commonly found in the midline and may be an extension of a posterior vaginal ridge. *Usually a congenital variant. Rarely caused by trauma.*

Transection of hymen, complete A tear or laceration through the entire width of the hymenal membrane, extending to (or through) its attachment to the vaginal wall.

Transection of hymen, partial A tear or laceration through a portion of the hymenal membrane, not extending to its attachment to the vaginal wall. *The strict definition of the term "transaction" implies a complete tear through the entire width of a membrane. Therefore, the use of the term "**partial transaction**" is less desirable. The term partial tear is suggested.*

Vaginal Introitus The pubovaginalis muscle which forms the entrance to the vagina. Frequently used synonymously with hymenal orifice.

Vaginitis Inflammation of the vagina; it may be marked by a purulent discharge and discomfort. *May be caused by a variety of conditions, including bacterial vaginosis, sexually transmitted diseases, foreign bodies, to name a few.*

Terminology involving the anal anatomy

Anal Fissure A superficial break (split) in the perianal skin which radiates out from the anal orifice. *A variety of causes including the passage of hard stools (constipation), diseases such a Crohn's Disease and trauma. Can heal without leaving visible scars.*

Anal Laxity Decrease in muscle tone of the anal sphincters resulting in dilation of the anus. *May occur immediately following an acute/forced sodomy.*

Anal Skin Tag A protrusion of anal verge tissue which interrupts the symmetry of the perianal skin folds. A projection of tissue on the perianal skin. *When located outside the midline, causes, other than a congenital variation should be considered, including such things as Crohn's disease or trauma.*

Anal Spasm An involuntary contraction of the anal sphincter muscles. May be attended by pain and interference with function. *May be found immediately post assault.*

"Anal Wink" Reflex anal sphincter muscle contraction as a result of stroking the perianal skin. Used to determine sensory nerve function. *Relationship to sexual abuse is unknown.*

Diastasis Ani (Smooth Area) A smooth, often "V" or wedge shaped area at either the 6 or 12 o'clock positions in the perianal region. It is due to the absence of the underlying corrugator external anal sphincter muscle and results in a loss of the usual anal skin folds in the area. *A congenital variant.*

Ecchymosis of the Perianal Tissues A hemorrhagic area (bruise) on the skin or mucous membrane of the perianal tissues due to extravasation of blood most commonly caused by external trauma. *May be confused with venous congestion and postmortem lividity.*

Edema The presence of abnormal amounts of fluid in the intercellular space. *If secondary to trauma, it will usually be accompanied by erythema, pain and swelling of perianal skin folds.* ***(Also called tissue swelling.)***

Flattened Anal Skin Folds A reduction or absence of the perianal folds or wrinkles, noted when the external anal sphincter is partially or completely relaxed. *The relationship to sexual abuse is unknown. A common finding in sedated, relaxed children and at autopsy.*

Funnel Appearance A decrease in the fatty (subcutaneous) tissue surrounding the anus, leading to a concave appearance.

Hyperpigmentation Increase in melanin pigment within the perianal tissues. *A common congenital finding in darker skinned children. May be associated with post-inflammatory changes.*

Intermittent and Dilation Anus dilates intermittently during examination, particularly in the prone knee-chest position. *A common finding in children of all ages.*

Perianal Venous Congestion The collection of venous blood in the venous plexus of the peri-anal tissues creating a flat, purple discoloration. May be localized or diffuse. *A common finding in children when the thighs are flexed upon the hips for an extended period of time.* ***(Also termed perianal venous engorgement or perianal venous pooling.)***

Reflex Anal Dilatation Anal dilation which occurs upon stroking the buttocks. *Once considered to be evidence of prior sexual abuse. Relationship to sexual abuse is currently unclear.*

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565 NW Holly Street, Issaquah, WA 98027
(425) 837-7000

Learning Assistance Program (LAP)

The Issaquah School District's LAP program mission is to provide intensive intervention for students not meeting standard in literacy. The goal of the program is to accelerate learning for these students and bring them quickly to standard.

Test scores from MSP assessments, Stanford 10 scores, Fountas and Pinnell reading assessments, and teacher observation are combined to create a rank-ordered list of students. Students are invited into LAP programs, beginning with those most in need of service. As students exit the program, their place is taken by the next student with greatest need. Students identified for LAP services are taught by highly qualified, certificated, teachers in a small group setting.

For more information, go to OSPI's Learning Assistance Program (LAP) webpage.

LAP contact

Director of Instructional Support Dawn Wallace at (425) 837-7043 or WallaceD@issaquah.wednet.edu.

LAWYER ASSISTANCE PROGRAM (LAP)

Most people encounter a difficulty at least once in their lives. The State Bar's Lawyer Assistance Program (LAP) is here to help. We help lawyers and State Bar applicants who are grappling with stress, anxiety, depression, substance use or concerns about their career.

We strive to support legal professionals in achieving their optimum level of practice, while enhancing public protection and helping to maintain the integrity of the profession.

We know that it is often difficult to reach out for help during difficult times, especially if it's about a private matter. Rest assured. We promise confidentiality – we release no information about your participation in the program without your knowledge or consent. **Participation is confidential as mandated by Business and Professions Code §6234.**

Our counselors can offer a free assessment of your situation and help you get the help you need, whether it's for a mental health issue, substance abuse, a medical condition or just financial planning. (There are some fees if you join a group or need additional services.)

If you represent an organization or agency, the LAP also offers free MCLE presentations covering substance abuse, depression, stress and the services of the LAP to local, statewide and specialty bar associations as well as to law firms that are interested in helping their members.

Want to know more? Contact the LAP by calling **877-LAP-4HELP (877-527-4435)** or sending an email to LAP@calbar.ca.gov.

- **Find out about the services LAP offers**
- **See what kind of counseling you can take advantage of at the LAP.**

Watch the first part of a new State Bar video series, the **"Lawyer Assistance Program Experience."**

Want to know more? Watch **part two.**

« If you stop practicing today, will you have the financial resources you need? LAP can help you plan for your **financial future.**

Financial Planning

Workshops and personal consultation

You may be planning for the time when you retire from your law career, or you may be considering leaving your practice due to health limitations. The LAP's financial planning services can help members create a plan and develop asset targets for the future.

To assist our members with planning and preparing for these possibilities, the LAP offers both free workshops and individual consultations with a Certified Financial Planner (CFP®).

For additional information about any of our services, please call **877-LAP-4 HELP (877-527-4435)** or e-mail LAP@calbar.ca.gov.

DECLARATION OF MAILING

GR 3.1

I, Harold S. George on the below date, placed in the U.S. Mail, postage prepaid, 3 envelope(s) addressed to the below listed individual(s):

Jason Ruff
Prosecuting Attorney
930 Tacoma Ave S
Room 946
Tacoma, Wa 98402

Washington State Court
of Appeals Division II
950 Broadway, Suite 300
Tacoma, Wa 98402

Kent Underwood
1111 Fawcett Ave Suite 101
Tacoma, Wash
98402

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DIVISION II
2015 MAY 22 PM 1:14
STATE OF WASHINGTON
BY _____
DEPUTY

I am a prisoner confined in the Washington Department of Corrections ("DOC"), housed at the Coyote Ridge Correctional Complex ("CRCC"), 1301 N. Ephrata Avenue, Post Office Box 769, Connell, WA 99326-0769, where I mailed said envelope(s) in accordance with DOC and CRCC Policies 450.100 and 590.500. The said mailing was witnessed by one or more staff and contained the below-listed documents.

1. Appellants Statement of
X. Additional Grounds
3. _____
4. _____
5. _____
6. _____

I hereby invoke the "Mail Box Rule" set forth in General Rule ("GR") 3.1, and hereby declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 18 day of May, 2015, at Connell WA.

Signature _____